IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL WRIT PETITION NO.6219/06

Rohitash Kumar **Versus** State & Ors.

DATE OF ORDER :: 10/04/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. P.D. Singh Tilotia, for petitioner
Mr. B.K. Sharma, Dy.G.A.

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Instant petition has been filed by petitioner who is Ex-Defence Personnel participated in the selection process initiated for the post of Constable and after selection, his candidature has been rejected on the premise that at one point of time an FIR was registered against him in 1985 and despite he being acquitted by the competent court of jurisdiction vide judgment dated 13th September, 1989, this fact was not disclosed at the time of submitting application in June, 2005 in pursuance of advertisement dated 14th June, 2005.

When petitioner was teenager, an FIR u/ss.147, 448, 323, 336, 427 read with 149 IPC was registered against him in 1985 and after regular trial, he was acquitted by the competent court of jurisdiction vide order dated 13th September, 1989 [Ann.6]. He was recruited in Indian Army as Sepoy on 23rd July, 1987 and after rendering 17 years of service, he took voluntary retirement on 31st March, 2004. Advertisement was

issued from the office of respondents making selection for the post of Constable on 14th June, 2005 and there was separate quota reserved for ex-defence personnel.

Petitioner being ex-defence personnel submitted application and participated in the process of selection in pursuance of advertisement, but all other similarly situated applicants got their appointment order. Petitioner approached the authority to find out as to why he has not been considered for appointment at that stage he was informed that there was a criminal case at one point of time registered against him and this fact he failed to disclose in application form and for this good reason, he has not been considered for appointment. Hence, he preferred the present writ petition.

Counsel for petitioner submits that once the petitioner was acquitted by the competent court of jurisdiction and thereafter has undergone 17 years of unblemished defence service, registration of FIR at one point of time in no manner can be considered to be concealment while submitting application in pursuance of advertisement issued in June, 2005 which is almost after 20 years of FIR being registered against him. Apart from it, once he has been acquitted by the competent court of jurisdiction it will presume that no criminal case was ever

registered against him and in such circumstances, in view of Rule 13 of the Rules, 1989, when persons who are convicted still can be considered for appointment. Petitioner atleast is on much better footing in such circumstances denial after his regular selection by the respondents in no manner can be said to be justified and is in violation of scheme of Rules, 1989.

Respondents have filed reply to the writ petition wherein only averment made in Para 6 is about an FIR being registered against petitioner, but nothing has been said as to whether it can be considered to be cause of concealment.

I have considered the submission of both the counsel and perused the material available on record.

Undisputedly, the basis for denial of appointment was only FIR which was once registered against petitioner in 1985 in which he has been acquitted by the competent court of jurisdiction on 13th September, 1989 and before he submitted application, he took voluntary retirement after rendering 17 years of service. Once the petitioner has been acquitted by the competent court of jurisdiction after regular trial, certainly a legal presumption can be drawn that very FIR which was alleged to be registered against him at one point of time looses its significance and he cannot be considered to be a

person committed criminal offence. Except one referred to above, no other criminal case was ever registered resulting into conviction against petitioner nor there was charge or case of respondents that he was ever involved in other criminal activities. Rule 13 of the Rules, 1989, relevant part whereof reads as follows:

> "**13. Character**. - The character of a candidate for direct recruitment must be such as to qualify him for employment in the service. He must produce a certificate of good character from the Principal Academic Officer of the University or College or School in which he was last educated and two such certificates, written not more than six months prior to the date of application from two responsible persons not connected with his School or College or University and not related to him.
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> **Notes. (1) A conviction by a Court of law need not of itself involve the refusal of a certificate of good character. The circumstances of the conviction should be taken into account and *if they involve no moral turpitude or association with crimes of violence* or with a movement, which has its object to overthrow by violent means a**

Government as established by law, <u>the mere conviction need not be regarded as a disqualification</u>. "

Rule 13 clearly postulates production of a certificate of good character, written not more than six months prior to date of application, from two responsible persons not connected with his School/College/ University and not related to him. A bare look at Note (1) appended to Rule 13 depicts that even conviction by Court of law, itself, need not be a ground for refusal of a certificate of good character; and the authority competent is under legal obligation also to take note of circumstances of conviction, which in case do not involve moral turpitude or association with crimes of violence, then also mere conviction need not be regarded as a disqualification for appointment under Scheme of Rules, 1989.

But, in the instant case, indisputably when there was no conviction by Court of law and FIR which was registered against him in 1985 he has been acquitted atleast 20 years before when submitted application in the year 2005 for the post of Constable, in my considered opinion, registration of FIR against petitioner in no manner can be considered as an impediment to cause prejudice to him, particularly, in the light of Rule 13 of Rules, 1989 and scope of Rule 13 has been considered by this court in detail in

the case of **Surendra Kr. Saini Versus State & Ors. [C.W. No.1997/05, decided on 9th February, 2007]**.

Consequently, I do not find any justification available with the respondents in withholding appointment of petitioner who has participated in the selection process for the post of Constable in pursuance of advertisement dated 14th June, 2005.

Accordingly, the writ petition succeeds and is hereby allowed. Respondents are now directed to consider the candidature of petitioner for appointment for the post of Constable in pursuance of advertisement dated 14th June, 2005 and if his name finds place in the order of merit, he may be considered for appointment in pursuance thereof. Necessary orders be passed within two months. No order as to costs.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.